

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

NEW ENGLAND)
WATERPROOFING, INC.,)
Plaintiff)
v.)
DAVID DALESSANDRI and)
CONCRETE PRESCRIPTIONS, LLC,)
Defendants)

**AFFIDAVIT OF DAVID DALESSANDRI IN SUPPORT OF DEFENDANTS'
MOTION FOR ORDER MODIFYING SCHEDULING ORDER AND GRANTING
LEAVE TO FILE AMENDED ANSWER AND COUNTERCLAIM**

I, David Dalessandri, do hereby depose on oath and state as follows:

1. I am one of the defendants in this action. I am also the sole member of Concrete Prescriptions, LLC (“Prescriptions”), the other defendant in this action. I make this affidavit based upon my own knowledge of the facts set forth herein.

2. On or about February 15, 2002, I signed a contract with Plaintiff, New England Waterproofing, Inc. ("NEWI") titled "Crack-X Sub-Contractor Agreement" ("the Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

3. Also on or about February 15, 2002, I paid NEWI a \$10,000 security deposit. Under the Agreement, the security deposit was supposed to be returned with interest after two years of service.

4. I am aware that NEWI entered into agreements with several other Crack-X dealers that were substantially similar to the Agreement.

5. The Agreement was drafted by NEWI.

6. After February 15, 2002, I completed NEWI's training program. I also formed a Maine corporation named Seacoast Crack-X, LLC ("Seacoast Crack-X"). I also bought a truck and had it decorated with the Crack-X logo. After I completed my training, I began providing products and services identified by the Crack-X brand directly to the public.

7. Although the Agreement was titled "Sub-Contractor Agreement," the relationship under the Agreement did not have the usual characteristics of a subcontractor relationship. In almost every case, NEWI did *not* contract directly with the customer and then subcontract the work to me. In almost every case, I contracted directly with my own customer and performed the work myself using my own equipment and materials. Instead of the customers paying NEWI and then NEWI paying me, my customers paid me directly and I paid NEWI a royalty of 40% of my revenue.

8. Over time, I came to realize that Seacoast Crack-X would not be profitable so long as it had to pay a 40% royalty to NEWI. I attempted to renegotiate the relationship with NEWI, but my efforts were unsuccessful.

9. On August 17, 2003, I received a letter from NEWI which stated that the Agreement had expired and further stated that if I wanted to continue as a Crack-X "subcontractor" I had to sign a new contract. A true and accurate copy of that letter is attached hereto as Exhibit B.

10. On August 18, 2003, I notified NEWI that I would not sign the new contract.

11. Beginning August 18, 2003, I also started taking steps to disassociate myself from NEWI and the Crack-X brand as quickly as possible. I stopped using the Crack-X name and logo and dissolved Seacoast Crack-X. I began doing business as Prescriptions. I started using a logo that looked nothing like the Crack-X trademark. An example of the Crack-X trademark is attached hereto as Exhibit C. An example of the Prescriptions logo is attached here to as Exhibit D.

12. NEWI has not refunded my \$10,000 security deposit.

13. I paid NEWI approximately \$35,000.00 in royalties during the term of the Agreement.

14. Throughout my dealings with NEWI, I did not know about the existence of any Federal Trade Commission ("FTC") franchise regulations. I did not know that the relationship under the Agreement might be a franchise. I did not know that a franchise disclosure statement might be required.

15. NEWI never provided me with a franchise disclosure statement.

16. I first learned about the FTC franchise regulations and their possible application to this case in mid-January 2005 when I spoke by telephone with attorney Stanley Wheatley.

17. Prescriptions and I retained attorney Wheatley on February 8, 2005.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 12th DAY OF MARCH 2005.

CERTIFICATE OF SERVICE

I hereby certify that on this day a true copy of the above document was served upon the attorneys of record for each party by hand/by mail.

Dated: 03/14/05


David Dalessandro



New England Waterproofing, Inc.

25 Washington Avenue
Natick, MA 01760

800-548-3379
Ph. 508-651-9702
Fax 508-651-9705



CRACK-X

PRIVATE AND CONFIDENTIAL

Crack-XTM

Sub-Contractor Agreement

For

David Dalessandri

February 14, 2002

Exhibit A

Purpose: To specify conditions and the rights and responsibilities of both parties for a mutually beneficial sub-contracting arrangement.

What Crack-X™ will provide:

- Training and technical expertise in the epoxy injection welding and grouting of foundation cracks and similar wall problems.
 - Training period to consist of three phases:
 - Initial phase – Introduction: one week in Crack-X vans, no wages
 - Second phase – Intensive: will require own (general) vehicle, wage of \$15/hr. Learn all phases of crack injection, including, but not limited to: wall cracks, penetrations, floor cracks, epoxy and urethane applications. Learn essentials of sales, customer service, pricing, scheduling, etc. Learn essentials of water management (exterior grading, ground water, etc.) Duration – approximately 2-3 weeks.
 - Third phase – In-field mentoring: subcontractor to take on responsibility for sales, application, customer contact, scheduling, “up-selling,” invoicing, customer service, etc. Includes teaming with experienced applicators on “new” and unusual applications, extensive projects, commercial work, etc. On-call support for learning and assistance. This phase to last (nominally) for 6 – 9 months.
- Ongoing Technical support and consultation as required, inclusion in all method and material updates and improvements, ongoing training to mirror that of Crack-X™ employees including management
- Guidelines in the acquisition of:
 - Application vehicle
 - Application tools, equipment and supplies
 - Vehicle signage
 - Office equipment, software, brochures, stationery, etc. as required
- Permission to use Crack-X™ logo and name only under this subcontractor arrangement
- Leads and sales from the main office as available
- Institutional advertising at the discretion of Crack-X™
- Cooperative advertising budget (up to \$5000 over the first six months, matching up to 50% of individual marketing efforts at the discretion of Crack-X™) and marketing support.

To be provided by Sub-Contractor:

- Approved vehicle with signage
- Application tools, equipment and supplies
- Suitably equipped office space, including QuickBooks accounting software
- Commercial Auto, Liability and Workers Compensation Certificates
- Crack-X™ uniforms, to be obtained through or as approved by Crack-X™
- Visibility and attendance at promotional events
- Marketing and sales effort as required
- Responsibility for all applications, warranties, insurance, invoicing, collections, taxes, customer service and follow up
- Monthly Report and full access to books and records

Finances:

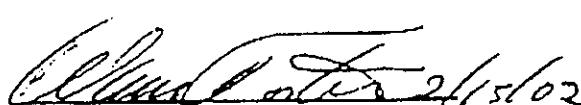
Sub-Contractor to provide:

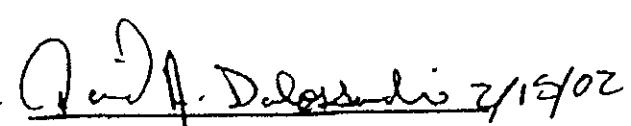
- 40% Royalty on all work performed, paid monthly
- Records as necessary
- An initial good-faith security of \$10,000. This security to be returned, with interest, after two (2) years tenure. Shall be paid as follows:
In full, at inception of agreement

Sub-Contractor to receive:

- Cooperative advertising support in start-up period as outlined above
- A commission on sales leads for Tuff-N-Dri™ Waterproofing builder leads

This agreement to be reviewed three months after inception, to review terms and conditions, including review of actual performance of subcontractor, and Crack-X™.

 2/15/02
Wayne Fortier
President
New England Waterproofing, Inc., dba Crack-X™

 2/15/02
David Dalessandri
Subcontractor

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2003 10:20AM PS



David Dalessandri
Seacoast Crack-X
7 Susan Road
Cape Elizabeth, ME 04107

August 14, 2003

Dear David,

Your contract dated January 17, 2002 has expired. In order for you to continue as a Crack-X™ subcontractor, a new contract must be signed, notarized, and returned to me by August 29, 2003. For several months we have listened and incorporated your thoughts and ideas into constructing a new contract with no resolve. Subject to the provisions set forth below, the attached contract is the last and final contract we are offering to you. If this contract is not accepted as provided herein, you must immediately cease holding yourself out as a Crack-X™ subcontractor, and you must cease all use of the Crack-X™ names, marks, logos, telephone numbers, and other indicia of Crack-X™ branding.

There are three (3) prerequisites for you to accept the contract as provided above. First, along with the signed contract you must include payment for the total outstanding balance on your account. Enclosed is a statement outlining the details of that balance. In the past we have worked in cooperation with you in creating a payment plan, but to date you have not adhered to the guidelines delineated by that plan. Your account must be current by August 29, 2003 in order for you to continue as a Crack-X™ subcontractor.

Second, any non-approved apparel, including the t-shirts discussed per your conversation with Jennifer Egerhei on July 22, 2003, must be mailed to the main office with the original invoice. The original invoice will be mailed back to you after we have produced a copy. Any apparel that has been distributed must also be collected and sent to our office. The deadline for this obligation is August 29, 2003 without exception.

Third, in order to continue as a Crack-X™ sub-contractor you must identify New England Waterproofing, Inc, dba Crack-X™ as the record owner of all telephone numbers that we have allowed you to associate with the Crack-X™ name, including fax numbers, by August 29, 2003. We will immediately put a pass code on those accounts and have the billing address changed to the Natick office. We will forward the bills to your office in Maine where you will still be responsible for payment. If you need any service changes on your lines you will need to contact our office and we will make the necessary modifications.

FROM :CRACK-X

RWB PORTLAND

FAX NO. :207-799-9100

Aug. 18 2003 10:21AM PG

2

If any of these requirements for continuation are not met by the deadlines stated above then any and all use by you of the Crack-X™ names and marks must terminate immediately. If you have any questions regarding this matter prior to August 29, 2003 please contact our office.

Sincerely,



Wayne Fortier
Owner
New England Waterproofing, Inc.
dba Crack-X™

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2003 10:21AM PT



PRIVATE AND CONFIDENTIAL

Crack-XTM Subcontractor Agreement

For

David Dalessandri

August 14, 2003

Purpose: To specify conditions and the rights and responsibilities of both parties for a mutually beneficial subcontracting arrangement.

FROM :CRACK-X

NWLP PORTLAND

FAX NO. :207-799-9100

Aug. 18 2003 10:22AM PB

SUBCONTRACTOR AGREEMENT

This Subcontractor Agreement is entered into this day of August, 2003, by and between New England Waterproofing, Inc. d/b/a Crack-X™ ("Crack-X™"), a Massachusetts corporation having a principal place of business at 25 Washington Avenue, Natick, Massachusetts 01760, and David Dalessandri, an individual residing at 7 Susan Road, Cape Elizabeth, ME 04107 ("Subcontractor").

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Ownership and use of marks:

The Crack-X™ name and Mark, and all logos, slogans, and designs, are the sole and exclusive property of Crack-X™. Subcontractor will not use the word "Crack-X" in its corporate or partnership name. In addition to all terms and conditions for the use of the Crack-X™ name and mark, Subcontractor will clearly indicate on its business checks, purchase orders, business cards, receipts, promotional materials and other written materials that subcontractor is an independently owned and operated Crack-X™ Business. Subcontractor will also display a sign which is clearly visible to the general public indicating that the Crack-X™ Business is an independently owned and operated Crack-X™ Business. Subcontractor will similarly indicate on all business stationery that the Crack-X™ Business is independently owned and operated.

2. What Crack-X™ will provide:

(a) **Training.** Crack-X™ will provide initial training in three (3) various phases of operation as a Crack-X™ Subcontractor. The content and form of training are selected by Crack-X™ in its sole judgment. The training will generally cover the following topics:

(a) Phase One - Business Management:

- Marketing / Advertising
- Sales
- Phone techniques
- Job estimating
- Bookkeeping

(b) Phase Two – Set Up and Procurement

- Truck
- Application equipment
- Customization of truck
- Application tools
- Office space
- Office equipment

(c) Phase Three - Crack Repair Training

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2003 10:22AM PS

- Classroom training
- Field training, ride with established crack technician as observer/helper
- Field training performing as primary crack technician. Established crack technician will ride along as mentor
- Chemical safety

In addition, Crack-X™ representatives will be available to provide ongoing technical support and consultation as required.

(b) Primary Area of Responsibility. Crack-X™ will assign to subcontractor on a non-exclusive basis the Primary Area of Responsibility ("PAR") designated in Schedule 1. While you may sell and provide services anywhere, you may only advertise within the PAR unless you have the prior written approval of Crack-X™.

(c) Guidelines for Obtaining Required Crack-X™ Approvals. Crack-X™ will inform Subcontractor of its current guidelines applicable to subcontractor for required approvals in the following areas:

- Truck
- Truck customization
- Application techniques, tools, equipment, materials and supplies
- Vehicle signage
- Office equipment, software, brochures, stationery, etc. as required
- Phone service
- Advertising, including Yellow Pages advertising
- Setup of office space
- Uniforms and other promotional materials
- Goods or services offered or sold that are outside of the standard Crack-X™ goods and services offered or sold

(d) Name and Mark Usage. With prior written approval of Crack-X™, and subject to the rules, regulations, directives and/or guidelines issued from time to time by Crack-X™, permission may be granted for Subcontractor to use the Crack-X™ logo and mark within the PAR, but only in connection with services provided under this subcontractor arrangement. In order to insure quality of service and to preserve the goodwill associated with the Crack-X™ name and Marks, Crack-X™ may inspect all work, work records, books and records of Subcontractor without prior notice.

(e) Leads. Crack-X™ receives inquiries from potential customers as a result of its reputation and general advertising. Crack-X™ will from time to time provide leads for services within the PAR that Crack-X™ deems suitable for subcontractor.

(f) Advertising. From time to time Crack-X™ engages in marketing and/or advertising campaigns. If Crack-X™, in its sole discretion, determines that regional advertising

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 16 2003 10:23AM P10

will be beneficial, Crack-X™ will allow subcontractor to participate in such regional advertising. In addition, to assist subcontractor in its marketing efforts, during the first year of operation, Crack-X™ will commit to funding advertising on a cooperative basis during the first year of this agreement, up to a total expenditure of \$5,000.00. Cooperative advertising must be initiated by subcontractor, and Crack-X™ will reimburse subcontractor for 50% of the actual cost of such advertisements. All advertising must be approved by Crack-X™ prior to implementation.

3. Subcontractor responsibilities:

The Subcontractor will undertake the following:

(a) Diligently learn and understand the Crack-X™ methodology for foundation welding and waterproofing, and only implement new methods and materials after testing and prior written approval from Crack-X™ operations manager; and

(b) Be responsive to customer requests, including without limitation, responding to customer calls and lead referrals on a daily basis; and

(c) Diligently protect the Crack-X™ name, mark and image, and not do anything to undermine or reduce such name, mark and image's value; and

(d) Be responsible for all applications, and associated warranties, insurance, invoicing, collections, taxes, customer service and follow up; and

(e) Sign and return to Crack-X™ the Non-Disclosure, Non-Competition and Non-Solicitation Agreement, substantially in the form attached hereto as Schedule 2; and

(f) Obtain and maintain required equipment, supplies and office space as all may be approved by Crack-X™, including without limitation:

(i) vehicle with appropriate signage; and

(ii) application tools, equipment and supplies; and

(iii) Office space with and suitable telephone and office equipment; and

(iv) Crack-X™ uniforms; and

(v) Maintain sufficient telephone lines including facsimile numbers in the name and ownership of New England Waterproofing, Inc., dba Crack-X™, and ensure the billing address for such telephone lines shall be 25 Washington Ave., Natick, MA 01760. Crack-X™ will forward the phone bills to the subcontractor and subcontractor shall be responsible for timely payment of all charges; and

FROM :CRACK-X

FPLB PORTLAND

FAX NO. :207-799-9100

Aug. 18 2003 10:24AM P11

(g) Maintain Commercial Auto, Liability and Workmen's Compensation insurance with liability limits recommended by Crack-X™, and provide to Crack-X™ Certificates of Insurance naming Crack-X™ as an additional insured; and

(h) Engage in marketing and sales efforts to promote the Crack-X™ name, including seeking name recognition through visible advertising and sponsorships, and attendance at promotional opportunity events; Obtain signed approval for all advertising from Crack-X™ advertising manager before implementation; and

(i) Provide reporting requested by Crack-X™, including without limitation, the following:

(i) Monthly Electronic Reports sent to Crack-X™ home office by the 5th of the following month. legerhei@crackfx.com (or such other address as may be designated by Crack-X™); and

(ii) Print out of monthly report, submitted together with copies of all invoices, sent to Crack-X™ home office by 10th of Month.

4. Financial Obligations:

Subcontractor's financial obligations to Crack-X™ shall be as follows:

(a) Payment of commissions by Subcontractor in the amount of (a) thirty five percent (35%) of Subcontractor's gross sales of foundation repair and waterproofing services and goods each month; and (b) twenty percent (20%) of all other gross sales of any other goods or services sold or offered by Subcontractor, sent to Crack-X™ home office by the 30th of the following month. Subcontractor may take a five percent (5%) discount off if payment is received by Crack-X™ before the 10th of the following month. All accounting shall be done using the accrual accounting method. Payments received more than thirty (30) days after the end of the month shall incur late charges equal to 12% per annum, calculated daily; and

(b) Provide all financial records as requested by Crack-X™; and

(c) Payment of a good-faith security fee of \$10,000, due at the signing of this agreement. This security fee will be refundable if subcontractor remains in the Crack-X™ system for at least two (2) years, is in good standing upon expiration or termination, has paid all amounts due to Crack-X™, and subcontractor signs and delivers Crack-X™'s then current form of Non-Disclosure, Non-Competition and Non-Solicitation Agreement.

5. Term. The initial term of this agreement is for six (6) months. After the initial term, this agreement may be renewed for a twelve (12) month term at the sole option of Crack-X™. Thereafter, this agreement shall automatically renew for three (3) successive one (1) year terms by Subcontractor's payment of a \$200 renewal fee at the commencement of each term and satisfactory evidence of full compliance with all terms and conditions of this Agreement.

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2003 10:24AM P12

6. **Termination.** Either party may terminate this Agreement at any time after the other party breaches this Agreement, provided that the breaching party is given written notice specifying the breach and the breaching party fails to correct the breach to the reasonable satisfaction of the other party within thirty (30) days of such notice. Either party may terminate this agreement immediately if (a) the other party terminates its existence or ceases operations of its business; (b) a voluntary or involuntary bankruptcy, receivership or similar proceeding is commenced with respect to the other party; (c) the other party becomes insolvent or makes an assignment for the benefit of creditors; or (d) Subcontractor takes or omits to take any action that has the effect of diminishing the good will or value of the Crack-X™ name or Marks. In addition to all other rights, Crack-X™ may elect to terminate this Agreement on sixty (60) days notice if Crack-X™ decides to offer to sell a franchise of the Crack-X™ system. In the event of termination, all rights and obligations of the parties accruing through the termination date, including payment of all amounts due to Crack-X™, shall be fulfilled and performed by the parties.

7. **Relationship of Parties.** At all times while acting pursuant to this Agreement, Subcontractor shall be an independent contractor and not an employee, partner, officer, joint venturer, franchisee, dealer or agent of Crack-X™ for any purpose, including without limitation for the purposes of any employee benefit program, tax withholding, unemployment benefits, or any other law rule or regulation affecting this relationship. Subcontractor shall have no right or authority to bind Crack-X™ or incur any liability on behalf of Crack-X™ except as specifically authorized in writing. Subcontractor shall be solely responsible for any and all local, state and federal taxes, charges or other payments due with respect to the compensation paid to Subcontractor hereunder or from referrals made by Crack-X™.

8. **Warranty; Indemnification.** Contractor warrants that any service rendered by Contractor during the term of this Agreement shall be performed in a good and workmanlike manner consistent with the highest level of care and skill used by other members of Contractor's profession. When authorized, Subcontractor may issue a Crack-X™ warranty for work performed by Subcontractor. Subcontractor further agrees to indemnify and hold harmless Crack-X™, its directors, officers, and employees from and against all claims, losses, damages, liabilities, costs and expenses, including attorney's fees and other reasonable legal expenses, arising out of or related to (i) any breach of Subcontractor's warranty; (ii) any negligent, reckless or intentionally wrongful act of Contractor; (iii) a determination by a Court or agency that the Contractor is not an independent contractor; or (iv) any breach by the Contractor of any covenants contained in this Agreement. In addition to all other remedies, Crack-X™ may require Subcontractor to re-perform work resulting in warranty claims without charge to Crack-X™ or the customer.

9. **Miscellaneous.** This Agreement sets forth the entire understanding of the parties relating to its subject matter, and supersedes all prior agreements, arrangements and understandings, written or oral, relating to its subject matter. This Agreement may be amended, modified, superseded or canceled only by a written instrument executed by both parties, or in the case of a waiver, by the party waiving compliance. Any notice to be given under this Agreement must be in writing. Notice will be deemed given and effective on the first business day following the date it is deposited, postage prepaid, in the United States mail directed to a party at

FROM : CRACK-X

the address set forth for that party on the first page of this Agreement or to such other address as a party may specify, by giving notice as provided. Notice given in any other fashion will be deemed given and effective when actually received. If any provision of this Agreement is declared void, or otherwise unenforceable, that provision will be deemed to have been severed from this Agreement, and the balance of this Agreement will remain in full force and effect. This Agreement will be binding upon and inure to the benefit of the successors, heirs and assigns of the parties. This Agreement may not be assigned by the Subcontractor. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflicts of law principles.

NEW ENGLAND WATERPROOFING, INC. SUBCONTRACTOR

By: _____

*Wayne Fortier,
President*

David Dalessandri

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2003 10:25AM P14

SCHEDULE I
PRIMARY AREA OF RESPONSIBILITY

The cities and towns covered by the following Verizon Yellow Pages directories:

MAINE

Portland
Biddeford
(Lewiston)
(Bath)

NEW HAMPSHIRE

Dover /Somersworth
Portsmouth
(Concord)

The directories in parentheses are considered "on loan". The Contractors PAR can be adjusted by Crack-X" at any time.

In the event that a city or town changes directories to another directory outside of the PAR:

1. The subcontractor may continue to service existing customers in that city or town.
2. If the new directory is in a different contractor's PAR, all new business will be the responsibility of that subcontractor.

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2003 10:26AM P15

SCHEDULE 2**NON-DISCLOSURE, NON-COMPETITION AND NON-SOLICITATION AGREEMENT**

This Non-Disclosure, Non-Competition and Non-Solicitation Agreement is entered into this day of August, 2003, by and between New England Waterproofing, Inc. d/b/a Crack-X™ ("Crack-X"), a Massachusetts corporation having a principal place of business at 25 Washington Avenue, Natick, Massachusetts 01760, and David Dalessandri, an individual residing at 7 Susan Road, Cape Elizabeth, ME 04107 ("Subcontractor").

Background. Crack-X™ and Subcontractor have entered into a Subcontractor Agreement for Subcontractor to provide services for Crack-X™. Entering this Non-Disclosure, Non-Competition and Non-Solicitation Agreement is contemplated by the Subcontractor Agreement.

Now therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Non-Disclosure. Subcontractor acknowledges that during the course of the relationship Subcontractor may learn of certain information relating to the operation of the Crack-X™ Business that is confidential, proprietary and/or not generally known outside of Crack-X™, including, without limitation, the Crack-X™ standards, methods, procedures and specifications, the training programs and methods, the written material provided to subcontractor, customers, pricing, pricing strategies, marketing strategies ("Confidential Information"). The Subcontractor shall maintain the absolute confidentiality of all such Confidential Information during the Term of the Subcontractor Agreement and thereafter, regardless of the reason for termination or expiration. Subcontractor shall not use or disclose any such information for any reason whatsoever, except only to the extent necessary for the operation of the Crack-X™ Business in accordance with the Subcontractor Agreement. The Subcontractor shall require its employees to whom such information is disclosed to comply with the provisions of this Confidentiality Agreement and shall require such employees to execute confidentiality agreements in a form acceptable to Crack-X™. The Subcontractor further agrees not to use any such information, directly or indirectly, in any other business or in any other manner or obtain any benefit there from not specifically approved in writing by Crack-X™.

2. Non-Competition. Except as specifically authorized in the Subcontractor Agreement, during the term hereof for a period of two (2) years following the expiration, non-renewal or termination of the Subcontractor Agreement (regardless of the reason for termination or non-renewal), the Subcontractor and its employees shall not directly or indirectly, individually or in conjunction with any person, firm, partnership, corporation or other third party or as principal, agent, shareholder, director, officer, employee, consultant or guarantor or in any other manner whatsoever, carry on or be engaged in or concerned with or interested in, financially or otherwise, or advise in the establishment or operation of, any business which competes in any line of business undertaken by Crack-X™, including without limitation providing concrete and/or foundation welding, repair or waterproofing services, or operating a business similar to Crack-X™ or Tuff-N-Dri foundation waterproofing. During the period following the expiration, non-

FROM :CRACK-X

FAX NO. :207-799-9100

Aug. 18 2005 10:27AM P16

renewal or termination of the Subcontractor Agreement, the restrictions contained in this paragraph shall only apply within fifty (50) miles of the Subcontractor's Primary Area of Responsibility or within fifty (50) miles of any Primary Area of Responsibility that may be assigned to any other person by Crack-X™.

3. Non-Solicitation. During the term of the Subcontractor Agreement and for a period of two (2) years after the termination or expiration of this Agreement for any reason whatsoever, the Subcontractor shall not directly or indirectly solicit for employment or seek to influence any employee of Crack-X™, Subcontractor, or any other Crack-X™ Business to become directly or indirectly the employee, agent, consultant, or representative of Subcontractor or any other concrete and/or foundation welding and waterproofing business.

3. Miscellaneous. Subcontractor's obligations under this Agreement will survive the termination, expiration or non-renewal of the Subcontractor Agreement regardless of the manner of such termination, and shall be binding upon Subcontractor's heirs, executors, and administrators. This Agreement will inure to the benefit of the successors and assigns of Crack-X™. *Subcontractor agrees that in addition to any other rights and remedies available to Crack-X™ for any breach by Subcontractor of the obligations hereunder, Crack-X™ will be entitled to enforce Subcontractor's obligations hereunder by court injunction.* If any provision of this Agreement is declared invalid, illegal or unenforceable, then such provision shall be enforced to the extent that a court deems it reasonable to enforce such provision. If such provision is unreasonable to enforce to any extent, such provision shall be severed and all remaining provisions will continue in full force and effect. This Agreement will be governed in all respects by the laws of the Commonwealth of Massachusetts.

In Witness Whereof, this Non-Disclosure, Non-Competition and Non-Solicitation Agreement is executed as if under seal as of the date first above written

David Dalessandri



